PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	Thomas D. Doerr et al.
Serial No.:	09/888,532
Filed:	June 25, 2001
For:	PHYSICIAN DECISION SUPPORT SYSTEM WITH RAPID DIAGNOSTIC CODE IDENTIFICATION
Examiner:	Rines, Robert D.
Art Unit:	3626
Docket No.:	951130.90011

APPELLANT'S REPLY BRIEF IN RESPONSE TO EXAMINER'S ANSWER

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
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Sir:

Appellant, Thomas D. Doerr et al. and US-RX, doing business as Wellinx, which is currently doing business as Purkinje, hereby submits this Reply Brief in response to the Examiner's Answer of July 2, 2007.

I. STATUS OF CLAIMS

Claims 1-21 are pending in the present application of which claims 1, 7, 10-12, 15, and 17-21 have been finally rejected under 35 U.S.C. §102(b) and claims 2-6, 8-9, 13, 14, and 16 have been finally rejected under 35 U.S.C. §103(a).

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

In the final Office Action of October 5, 2006, a variety of objections and rejections were removed in light of previously-presented amendments. However, the Office Action maintained the rejection of claims 1, 7, 10-12, 15, and 17-21 under 35 U.S.C. §102(b) as being anticipated by Evans (U.S. Pat. No. 5,924,074). Additionally, the final Office Action maintained the rejection of claims 2-6 and 8-9 under 35 U.S.C. §103(a) as being unpatentable over Evans in view of Abbo (U.S. Pat. Application No. 2003/0195774). Furthermore, the final Office Action maintained the rejection of claim 16 under 35 U.S.C. §103(a) as being unpatentable over Evans in view of Abbo and in further view of Rappaport (U.S. Pat. Application No. 2002/0007285). Finally, claims 13 and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over Evans in view of Abbo and in further view of Mayaud (U.S. Pat. No. 5,845,255).

III. ARGUMENT

Though Appellant believes that the proffered rejections were duly addressed and traversed in the Appeal Brief of February 8, 2007, Appellant wishes to take this opportunity to address some of the specific statements made by the Examiner in the Examiner's Answer of July 2, 2007. That is, in the Examiner's Answer, the Examiner made additional statements that further highlight that the proffered rejection is improper and must be withdrawn. However, the following remarks are intended to supplement and in not replace the previous remarks included in the Appeal Brief of February 8, 2007.

First, on pages 18-20 of the Examiner's Answer, paragraphs [0057] and [0058] of Abbo are cited repeatedly to support the proposition that Abbo teaches a system and method for the retrieval of the most frequently used ***diagnostic codes***. Specifically, the Examiner provided the following citations:

> With respect to the diagnosis step, the physician can select a ***diagnosis*** from the patient's previous diagnoses (e.g., from a file that includes the patient's major diagnoses) or the physician can enter a new diagnosis.

Paragraph [0057] (emphasis added).

> Preferably, when the physician is entering a ***diagnosis*** for a patient, the physician has the option of viewing and selecting from a list of the common ***diagnoses*** used in that particular physician's office....The physician may also have the option of displaying and selecting from a list of common ***diagnoses*** used in the particular physician's office, which are associated with a specified organ system of the body (e.g., such as musculo-skeletal, cardiovascular, skin disorders, gastrointestinal, etc.).

Paragraph [0058] (emphasis added).

As is readily apparent from the plain language of the cited section, these sections do no teach or suggest the specifically claimed systems and methods for retrieving, narrowing, and selecting ***diagnosis codes***. That is, the cited sections are directed to selecting, entering, and/or viewing a ***diagnosis***. In fact, the very section of paragraph [0058] not cited by the Examiner further illustrates this point by stating:

> The physician selects one [diagnosis] by simply clicking on it. The program provides the name and the ICD code.

Paragraph [0058].

Hence, paragraph [0058] when read as a whole clearly does not teach or suggest the claimed systems and methods directed to narrowing, displaying, and selecting ***diagnosis codes*** because it requires a physician to select a ***diagnosis***

(rather than a diagnosis code) and, only then, does the system supply the diagnosis codes. As previously explained in the Appeal Brief of February 8, 2007, the present invention improves over systems that allow for the physician to enter a diagnosis rather than a diagnosis codes because the physician is not properly focused on selecting the proper diagnosis code(s). Rather, in systems such as Abbo, the physician relies on others (including computer programs) to select the proper diagnosis codes. On the other hand, the present invention is specifically designed for aiding physicians and clinicians to "improve their medical practice through observing their patient's response to treatments and conferring with their colleagues about the experiences of their colleague's patients." Specification, ¶ [0003]. This process, called "outcome-based" medicine, is facilitated and expanded by the present invention by providing a highly flexible system for record keeping that records and tracks a wide variety of information based on the selection of diagnosis codes. Simply selecting a "***diagnosis***" as taught by Abbo in the cited sections does not achieve these advantages, as provided by the present invention.

Second, on page 19 of the Examiner's Answer states that "Abbo specifically includes the functionally of grouping diagnoses as those commonly employed in a physician's office *AND* as defined by specific organ systems as a separate and additional functional feature." (emphasis in original). Following thereafter the Examiner's Answer stated, the "Examiner submits that the distinction made by Abbo is to provide an additional function, not a single grouped function as interpreted by Appellant." Beyond the fact that the statements and conclusions continue to fail to appreciate the distinction between grouping, selecting, etc. ***diagnoses***, as opposed to grouping, selecting, etc. ***diagnosis codes***, the Examiner provided no support for this conclusion other than a citation to paragraph [0058] of Abbo. That is, Appellant does not find any support in paragraph [0058] or Abbo as a whole to conclude that "the distinction made by Abbo is to provide an additional function, not a single grouped function as interpreted by Appellant," as the Examiner did.

Third, page 20 of the Examiner's Answer states that the "Examiner admittedly fails to understand the relevance of Appellant's arguments concerning the example provided by Abbo which indicates that the patient's previous diagnoses may, for example, be derived from a file include the patient's major diagnoses." The argument to which the Examiner is referring concerned claim 5, which calls for the methodology to provide the "***most recent diagnosis codes for the patient***."

Appellant explained that providing the "***most recent diagnosis codes***" is **not** the same as providing "***the patient's previous diagnoses (e.g., from a file that includes the patient's major diagnoses)***." Beyond the above-addressed and important distinction between "diagnosis" and "diagnosis code," the distinction between providing the "***most recent diagnosis codes***" and providing "***the patient's previous diagnoses (e.g., from a file that includes the patient's major diagnoses)***" can be readily addressed by way of an example.

By way of example, a patient's previous diagnoses may include 1) a hang nail, 2) a broken bone, and 3) cancer. Using the system of Abbo, which provides previous diagnoses by accessing a file storing the major diagnoses, the physician would be provided with a list of diagnoses (not codes) listing cancer and, possibly, a broken bone, but certainly not including the a hang nail. That is, although the diagnosis of a hang nail is the most recent diagnosis, the diagnosis would not be provided to the physician because it is not "a major diagnosis." However, using the claimed invention, which provides a list of diagnosis *codes* narrowed to the most recent diagnosis codes for the patient, the physician would be provided with a list of diagnosis *codes* that include the hang nail, the broken bone, and, probably, cancer. Like the distinctions addressed above with respect to the difference between displaying, narrowing, selecting, etc. diagnosis codes instead of diagnoses, this distinction seems subtle but provides a significant functional difference that is an important part of the claimed invention and is not taught or suggested in the art of record.

For at least these reasons, Appellant respectfully rebuts the Examiner's assertions. Furthermore, Appellant contends that these remarks, in conjunction with those previously submitted, establish the patentability of the claimed invention over the art of record.

IV. CONCLUSION

In view of the above as well as the remarks provided in the Appeal Brief of February 8, 2007, Appellant requests reversal of the final rejection regarding claims 1-21 and a Notice of Allowance.

Respectfully submitted,

Dated: 9/5, 2007

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SUBMISSION OF APPELLANT'S REPLY BRIEF

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Sir:

Appellant hereby submits a Reply Brief in response to the Examiner's Answer of July 2, 2007, in the appeal of the final rejection in the above-listed patent application.

No fee is believed due for filing the accompanying Reply Brief. However, if any fees are deemed due, please charge such fees to Deposit Account No. 17-0055.

Respectfully submitted,

Dated: 9/5, 2007

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